THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

The Honorable Tom Bliley
House of Representatives
Washington, DC 20515-6115

Dear Mr. Bliley:

Thank you for your comments regarding the National Practitioner Data Bank (NPDB). I share your interest in the NPDB and its important role in protecting the public. Below are answers to the 13 questions you posed regarding the NPDB.

1. Please provide your views on whether the authorizing statute should be changed to include a requirement that the information in the NPDB be made available to the public.

The issue of disclosing to the public information contained in the NPDB is complex. On one hand, I agree with your assertion that consumers need more information in order to make educated decisions regarding the medical professionals whose treatment they may wish to seek. On the other hand, the NPDB's authorizing statute, the *Health Care Quality Improvement Act of 1986* (HCQIA) did not contemplate public disclosure of NPDB information; and, as Congress recognized at the time, there are privacy concerns regarding broad public disclosure of potentially incomplete negative information. NPDB information was intended, by Congress, to serve as an important supplement to comprehensive and careful professional peer review of a practitioner's professional credentials and not as a complete history. The specifics of any legislative change which would allow for public disclosure of NPDB information would need to be carefully considered.

2. Please provide your views on whether the authorizing statute should be changed to include a requirement that the NPDB include criminal convictions.

As you may know, the Department has recently unveiled the Healthcare Integrity and Protection Data Bank (HIPDB), as authorized by Section 221(a) of the Health Insurance Portability and Accountability Act of 1996. The HIPDB collects reports on health-care related criminal convictions against health care suppliers, providers, and practitioners (including physicians). Therefore, we do not perceive a need to amend the HCQIA for this purpose; however, the benefit of combining data banks should be explored.

3. Please provide your views on whether you believe there is under-reporting to the NPDB due to covered entities: 1) failing to comply with statutory reporting requirements; or 2) failing to aggressively pursue disciplinary actions, including imposing disciplinary sanctions designed to avoid the statutory reporting requirements.

The Office of Inspector General report issued in 1995 (see reference in No. 7 below) suggests

that all of the causes you mention are likely to play a part in underreporting. The absence of a ready source of reliable data makes it difficult to assess why adverse action reporting levels have been low. Another cause may be the inherent weakness in a sanction, loss of immunity, which rarely comes into play since few practitioners bring legal actions and even fewer prevail.

4. Please provide your views on whether the authorizing statute should be changed to require hospitals to query the NPDB before hiring medical residents, interns and medical students.

Currently, there are only reports about licensed practitioners in the NPDB. As a result, there are no reports concerning interns and medical students and fewer than 1,000 reports involving residents. The HCQIA does, however, require that hospitals query the NPDB when a resident applies for clinical privileges or medical staff membership and every two years on residents on the medical staff or holding clinical privileges. Therefore, we do not believe that a change in HCQIA is necessary.

5. Please identify what HRSA has done to ensure that covered entities comply with their statutory requirements to report disciplinary actions to the NPDB, including actions taken pursuant to 42 U.S.C. 11133(c). Please provide all records relating to such efforts.

Any allegation of an NPDB reporter's failure to report a required adverse action is investigated fully by HRSA, with the assistance of the HHS Office of Inspector General, if necessary. During the course of investigating an allegation of an entity's failure to report an adverse action, HRSA offers, as mandated by the Act, the entity a chance to correct its non-compliance. In every case, the entity has then complied by reporting the adverse action. Therefore, it has not been necessary to impose sanctions for failure to report adverse actions.

6. Please identify, on a State by State basis, the number of disciplinary actions that hospitals or other applicable health care entities have taken against doctors under their control, as reported to the NPDB during the most recent year for which information is available.

See Tab A.

7. Please identify all efforts that have been made to assess the levels of compliance with the reporting requirements of the NPDB. In particular, please identify any attempts to determine the frequency with which sanctions below the threshold reporting requirements are imposed, and whether such sanctions may have been imposed to avoid the reporting requirements of the NPDB.

The HHS Office of Inspector General published a report in February 1995 which attempted to analyze hospital underreporting. A copy of the report is enclosed at Tab B.

8. Please identify what HRSA has done to assess hospitals' rates of compliance with statutory requirements that they query the NPDB about doctors or licensed health care practitioners before hiring them. Please provide all records relating to such efforts.

As you know, hospitals are required by the Act to query the NPDB when a physician, dentist or other health care practitioner applies for clinical privileges or medical staff membership and every two years on physicians, dentists or other health care practitioners on the medical staff or holding clinical privileges.

Based on our experience with the NPDB, it is our professional judgment that we do not have a problem with hospital compliance with mandatory querying requirements under the Act. It is our impression that hospitals have incorporated their mandatory NPDB querying requirements into their credentialing processes, and that virtually all of the nearly 3,000 hospitals in the U.S. query the NPDB some time during the course of a year. Based on our understanding of the credentialing process and the average number of hospitals where a physician is likely to hold admitting privileges, 800,000-900,000 queries per year by hospitals seem reasonable.

9. Please identify what HRSA has done to encourage the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) to monitor the reporting of disciplinary actions by hospitals to the NPDB. Please provide all records relating to such efforts.

We have held numerous discussions with JCAHO representatives over time on the issue of reporting of disciplinary actions by hospitals to the NPDB. It is our understanding that hospitals have been reluctant to share NPDB information with JCAHO during accreditation surveys for fear of violating the NPDB's confidentiality provisions. Recently, we provided a policy clarification (Attachment C) which elucidates that hospitals can in fact share confidential NPDB information with JCAHO surveyors, as well as with other reviewers, as long as the purpose of the disclosure is to carry out peer review activity for the health care entity (i.e., JCAHO maintains a role in the decisionmaking process for practitioner membership in the hospital) without violating the NPDB's confidentiality provisions. Hopefully, this policy will allow JCAHO better access to hospitals' NPDB information, thus serving as the impetus for JCAHO to take a more active role in monitoring hospitals' reporting to the NPDB. We will continue to work closely with JCAHO regarding this issue.

10. Please identify every U.S. hospital that has not, since the inception of the NPDB, submitted a report relating to a disciplinary action taken against a doctor.

We have included (Tab D) a list of hospitals which are registered with the NPDB but which have never filed a report of a disciplinary action. This list may include entities which are no longer operating under the name listed and may have reported under another name or may no longer be in operation at all. Additionally, some hospitals are registered more than once because they choose to report and/or query by department rather than centrally because their credentialing process is also decentralized. The primary purpose of the NPDB entity file is to control access. Therefore, records about an entity not doing business with the NPDB may not be current.

11. Please identify, on a State-by-State basis, the number of disciplinary actions taken by State medical licensing boards, against doctors, as reported to the NPDB during the most recent year for which information is available.

See Tab E.

12. Please identify all efforts that have been made to assess the ability of state medical licensing boards to effectively investigate allegations of physician misconduct and impose applicable sanctions where appropriate.

In 1993, the Office of Inspector General issued a report on the effectiveness of State boards. A copy of this report (Tab F) is attached.

13. Please identify those States that make doctor malpractice and/or disciplinary records accessible to the public through a central clearinghouse. If known, please also identify which States provide this information via the Internet.

Board-imposed final disciplinary actions against physicians are matters of public record in all 50 States and the District of Columbia. The following 16 States make this information, at minimum, available through the Administrators in Medicine website (http://www.docboard.org/):

Arizona	Maryland	Oregon
California	Massachusetts	Rhode Island
Colorado	Minnesota	Texas
Iowa	North Carolina	Vermont
Kansas	Ohio	
Maine	Oklahoma	
Maryland		

The type of action(s) disclosed publicly varies by State. Many States provide public access to adverse licensure actions only. However, the State of Massachusetts provides public access to adverse licensure actions, adverse clinical privileging actions, medical malpractice payments, and criminal convictions.

I sincerely appreciate your efforts in assuring the NPDB meets its intended goals.

Sincerely,

Donna E. Shalala

Enclosures